



April 6, 2007

ENGROSSED SENATE BILL No. 205

DIGEST OF SB 205 (Updated April 4, 2007 12:27 pm - DI 69)

Citations Affected: IC 13-20; IC 14-8; IC 14-9; IC 14-21; IC 14-22; IC 23-14; IC 32-21.

Synopsis: Environmental matters and archeology. Provides that a person that: (1) holds a valid solid waste landfill construction permit that authorizes construction for a facility that has not been substantially developed; and (2) has not commenced construction within five years after the date of the permit or another period established by rule or statute; must apply for a new construction permit and meet the requirements of all applicable environmental laws existing at the time the new permit is sought. Provides that a person that: (1) holds a valid solid waste landfill construction permit that authorizes construction at an operating facility; and (2) has not commenced construction within five years after the date of the permit or another period established by rule or statute; must meet the requirements of all applicable environmental laws existing at the time construction is substantially commenced. Redefines "artifact" and changes the date used in determining whether an object or feature is an artifact. Redefines "burial ground" to include certain historic sites. Redefines "plan" to include a plan for excavation of ground related to construction.
(Continued next page)

Effective: July 1, 2007.

Gard, Hume

(HOUSE SPONSORS — DVORAK, WOLKINS)

January 8, 2007, read first time and referred to Committee on Energy and Environmental Affairs.

February 20, 2007, amended, reported favorably — Do Pass.

February 26, 2007, read second time, ordered engrossed. Engrossed.

February 27, 2007, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 12, 2007, read first time and referred to Committee on Environmental Affairs.

April 5, 2007, amended, reported — Do Pass.

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Exempts qualified professional archeologists who conduct phase 1 archeological surveys from certain archeological restrictions. Establishes criminal penalties for certain actions that disturb human remains. Requires a person disturbing ground to use reasonable care and diligence to determine if the ground that may be disturbed is within 100 feet of a cemetery or burial ground. Requires a person who disturbs buried human remains or artifacts to cease disturbing the remains or artifacts and the surrounding area within 100 feet and makes it a Class A infraction to fail to do so. Includes excavating or covering over the ground a prohibited activity within 100 feet of the limits of a cemetery or burial ground. Establishes certain requirements for development plans and archeological plans. Applies certain notice requirements to a person who disturbs burial grounds. Makes reports concerning the location of historical or archeological sites confidential under some circumstances. Allows certain persons to accompany a conservation officer to investigate a violation of historic preservation and archeology law. Establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with an approved archeological or development plan. Allows a court to order restitution for certain costs related to the violation of historic preservation and archeology law. Makes it a Class D felony to possess looted property and a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. Provides that a disinterment under a plan approved by the department of natural resources is exempt from other disinterment procedures. Requires a property owner to identify in a residential real property sales disclosure form any part of the property that was subject to surface mining at any time during the 20 years that immediately precede the closing date.

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April 6, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 205

A BILL FOR AN ACT to amend the Indiana Code concerning the environment and natural and cultural resources, and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-20-2-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 9. (a) A person that:**

4 **(1) holds a valid construction permit that is issued under this**
5 **chapter and authorizes construction for a facility that has not**
6 **been substantially developed; and**

7 **(2) has not commenced construction within:**

8 **(A) five (5) years after the date of the permit; or**

9 **(B) another period established by rule or statute;**

10 **must apply for a new construction permit and meet the**
11 **requirements of all applicable environmental laws existing at the**
12 **time the new permit is sought.**

13 **(b) A person that:**

14 **(1) holds a valid construction permit that is issued under this**
15 **chapter and authorizes construction at an operating facility;**
16 **and**

17 **(2) has not commenced construction within:**

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(A) five (5) years after the date of the permit; or
 (B) another period established by rule or statute;
 must meet the requirements of all applicable environmental laws
 existing at the time construction is substantially commenced.

(c) The periods described in subsections (a) and (b) for a person
 to commence construction are tolled pending either of the
 following concerning the construction permit:

(1) An administrative appeal.

(2) A judicial review.

SECTION 2. IC 14-8-2-53 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 53. "Conservation
 officer" for purposes of IC 14-9-8, has the meaning set forth in
~~IC 14-9-8-1.~~ **refers to an officer employee of the law enforcement
 division organized under IC 14-9-8.**

SECTION 3. IC 14-21-1-2 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this
 chapter, "artifact" means:

(1) a feature that is nonportable evidence of past human
 behavior or activity and is found on or in the ground,
 including structural remains formed before December 31,
 1870; or

(2) an object made, ~~or shaped by human~~ modified, or used
~~workmanship~~ before December ~~11, 1816.~~ **31, 1870.**

SECTION 4. IC 14-21-1-3 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this
 chapter, "burial ground" means ground in which human remains are
 buried. The term includes **the following:**

(1) The land associated with or incidental to the burial of human
 remains.

(2) **Historic cemeteries or land with human remains buried
 before December 31, 1939.**

SECTION 5. IC 14-21-1-8 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) As used in this
 chapter, "plan" refers to:

(1) an archeological plan, as described in subsection (b); or

(2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for
 the systematic recovery, analysis, and disposition by scientific methods
 of material evidence and information about the life and culture in past
 ages.

(c) As used in this chapter, "development plan" means:

(1) a plan for the erection, alteration, or repair of any structure; **or**

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(2) a plan for the excavation of any ground related to construction.

SECTION 6. IC 14-21-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. (a) As used in this section, "agricultural purpose" includes farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry, and poultry husbandry.

(b) Sections 25, 26, 28, and 29 of this chapter do not apply to the following:

- (1) Surface coal mining regulated under IC 14-34.
- (2) Cemeteries and human remains subject to IC 23-14.
- (3) Disturbing the earth for an agricultural purpose.
- (4) Collecting any object other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped.

(5) Qualified professional archeologists, as determined by the department, who conduct phase 1 archeological surveys according to guidelines in effect by the department.

SECTION 7. IC 14-21-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25. (a) The commission shall adopt rules establishing standards for plans.

(b) With respect to archeological plans, the rules must impose a standard of conduct that does the following:

- (1) Promotes the scientific investigation and conservation of past cultures.
- (2) Considers the interests and expertise of amateur archeologists and professional archeologists.

(c) With respect to development plans, the rules must impose a standard of conduct that preserves and protects both of the following:

- (1) The rights and interests of landowners.
- (2) The sensitivity of human beings for treating human remains with respect and dignity, as determined by the commission.

(d) Plans required under this chapter must be submitted to the department for approval according to rules adopted by the commission.

(e) Proposed plans and any reports required by the plans must be reviewed by the division within thirty (30) days after receipt.

SECTION 8. IC 14-21-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) A person who disturbs the ground for the purpose of discovering artifacts, ~~or~~ burial objects, **or human remains** must do so in accordance with a plan approved by the department under section 25 of this chapter or under

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IC 14-3-3.4-14 (before its repeal).

(b) A person who recklessly, knowingly, or intentionally violates this section commits **the following**:

(1) A Class A misdemeanor, **if the violation does not involve disturbing human remains.**

(2) A Class D felony, **if the violation involves disturbing human remains.**

SECTION 9. IC 14-21-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

(1) A public utility (as defined in IC 8-1-2-1(a)).

(2) A corporation organized under IC 8-1-13.

(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).

(4) A surface coal mining and reclamation operation permitted under IC 14-34.

Except as provided in this subsection, subsection (b), and subsection (c), a person may not disturb the ground within one hundred (100) feet of **the limits of** a burial ground or cemetery for the purpose of **excavating or covering over the ground or** erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later than sixty (60) days after the development plan is submitted.

(b) A development plan:

(1) must be approved if a person intends to:

(A) **excavate or cover over the ground; or**

(B) construct a new structure or alter or repair an existing structure;

that would ~~significantly~~ impact the burial ground or cemetery; and

(2) is not required if a person intends to:

(A) **excavate or cover over the ground; or**

(B) erect, alter, or repair an existing structure;

for an incidental or existing use that would not impact the burial ground or cemetery.

(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground or cemetery must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is

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located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(d) A development plan may require surveys to delimit the burial ground with respect to the proposed alteration.

(e) If a burial ground is within an archeological site, an archeological plan is required to be part of the development plan.

~~(d)~~ **(f)** A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

SECTION 10. IC 14-21-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) A person who disturbs buried human remains **or burial grounds** shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance.

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

SECTION 11. IC 14-21-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 28. A person who ~~with the intent to disturb ground for the purpose of discovering or removing artifacts, burial objects, grave markers, or human remains, disturbs~~

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~~buried~~ **disturbs** human remains or grave markers **while moving, collecting, or removing artifacts or burial objects** either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3.4-14 (before its repeal); or

(2) in violation of such a plan;

commits a Class D felony.

SECTION 12. IC 14-21-1-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) A person who discovers, **uncovers, collects, or moves** an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects shall do the following:

(1) Immediately cease disturbing the ground **and the area within one hundred (100) feet of the artifact or burial object.**

(2) Notify the department within two (2) business days after the time of the disturbance.

(b) After notification under subsection (a), the department may do any of the following:

(1) Authorize the person to continue the ground disturbing activity, with or without conditions.

(2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after thirty (30) days from the date that the department receives notice.

(c) A person who violates subsection (a) commits a Class A infraction.

SECTION 13. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 32. **(a) Subject to subsections (b) and (c), the division may keep reports and information concerning the location of historic and archeological sites confidential if the director of the division determines that disclosure would likely:**

(1) risk harm to the historic or archeological site;

(2) cause a significant invasion of privacy; or

(3) impede the use of a traditional religious site by practitioners.

(b) The division may not disclose reports and information required to be confidential under federal law.

(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the division, shall determine who may have access to the confidential

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reports and information.

SECTION 14. IC 14-21-1-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 33. An employee of the division or a person authorized by the department may accompany a conservation officer on public or private property to determine if there is a violation of this article.**

SECTION 15. IC 14-21-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 34. (a) The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with any entity that the division selects.**

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director of the division considers appropriate. The director shall use a gift or grant received under this subsection:

(1) to carry out subsection (a); and

(2) according to the terms and obligations of the gift or grant.

(c) The auditor of state shall establish the archeology preservation trust fund for purposes of holding money received under subsection (b).

(d) The director of the division shall administer the archeology preservation trust fund. The expenses of administering the archeology preservation trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the archeology preservation trust fund that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the archeology preservation trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the archeology preservation trust fund at the end of a state fiscal year does not revert to the state general fund. There is annually appropriated to the division the money in the archeology preservation trust fund for the division's use in carrying out the purposes of this section.

(g) The division may adopt rules under IC 4-22-2 to govern the

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administration of this section.

SECTION 16. IC 14-21-1-35 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 35. (a) In addition to:**

(1) a:

(A) sentence imposed under this chapter for a felony or misdemeanor; or

(B) judgment imposed under this chapter for an infraction; and

(2) an order for restitution to a victim;

a court may order an individual to make restitution to the archeology preservation trust fund established under section 34 of this chapter for the division's costs incurred because of the offense committed by the individual.

(b) In ordering restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court by the division.

(2) The cost to the property owner to restore or repair the damaged area of an archeological site or burial ground and place the property in the property's original condition as nearly as practicable.

(3) The amount of restitution that the individual is or will be able to pay.

(c) The court shall immediately forward to the division a copy of an order for restitution made under this section.

SECTION 17. IC 14-21-1-36 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).**

SECTION 18. IC 14-22-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17. The term includes a conservation officer. (as defined in IC 14-9-8-1).**

SECTION 19. IC 23-14-57-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. This chapter does not apply to the **following**:

(1) **The** disinterment, disentombment, or disurnment of remains upon the written order of the coroner of the county in which the cemetery is situated.

(2) **The removal of human remains under a plan approved by the division of historic preservation and archeology under IC 14-21-1.**

SECTION 20. IC 32-21-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

(1) Disclosure by the owner of the known condition of the following:

(A) The foundation.

(B) The mechanical systems.

(C) The roof.

(D) The structure.

(E) The water and sewer systems.

(F) Additions that may require improvements to the sewage disposal system.

(G) Other areas that the Indiana real estate commission determines are appropriate.

(2) A notice to the prospective buyer that contains substantially the following language:

"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property."

(3) A notice to the prospective buyer that contains substantially the following language:

"The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner."

(4) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

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1 **(5) Identification by the owner of any part of the property**
2 **that was subject to surface mining at any time during the**
3 **twenty (20) years that immediately precede the closing date.**
4 SECTION 21. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1,
5 2007].

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 205, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-157.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 157.5. "Permit rules", for purposes of IC 13-15-3 and IC 13-15-7, refers to any of the following:**

- (1) 326 IAC 2-1.1-9.
- (2) 326 IAC 2-2-8.
- (3) 327 IAC 3-2-3.
- (4) 327 IAC 3-2-5.
- (5) 327 IAC 8-3-2.
- (6) 327 IAC 8-3.5-10.
- (7) 327 IAC 15-5-12.
- (8) 327 IAC 15-6-10.
- (9) 327 IAC 15-13-19."

Page 1, line 17, delete "chapter;" and insert **"chapter that authorizes construction;"**.

Page 2, line 3, delete "different" and insert **"shorter"**.

Page 2, line 3, delete "another statute during" and insert **"IC 13-18-10-2.2 or permit rules;"**.

Page 2, delete line 4.

Page 2, delete lines 8 through 17, begin a new paragraph and insert:

"(d) A period described in subsection (c) for a person to commence construction is tolled pending either of the following regarding the construction permit:

- (1) An administrative appeal.**
- (2) A judicial review."**

Page 2, delete lines 36 through 40.

Page 2, line 41, delete "(d)" and insert **"(c)"**.

Page 3, line 4, after "1." insert **"(a)"**.

Page 3, line 19, delete "different" and insert **"shorter"**.

Page 3, line 19, delete "another statute during" and insert **"IC 13-18-10-2.2 or permit rules."**

Page 3, delete lines 20 through 27.

Page 3, line 28, delete "(7)" and insert **"(6)"**.

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Page 3, after line 32, begin a new paragraph and insert:

"(b) A period described in subsection (a)(5) for a person to commence construction is tolled pending either of the following regarding the construction permit:

(1) An administrative appeal.

(2) A judicial review."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 205 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senator Hume be added as coauthor of Engrossed Senate Bill 205.

GARD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 205, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning the environment and natural and cultural resources, and to make an appropriation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 205 as printed February 21, 2007.)

DVORAK, Chair

Committee Vote: yeas 10, nays 0.

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